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To:	Uniformity Committee
From:	Roxanne Bland, MTC Counsel
Date:	February 10, 2012
Subject:	Communications Transactions Tax Centralized Administration Proposals

### **Introduction**

The Uniformity Committee has recommended the three attached Communications Transaction Tax Centralized Administration models to the Executive Committee for approval for public hearing. This memorandum provides the history of the project and a summary of the proposals.

### **History**

In 2007, industry representatives from AT&T and Time Warner Cable gave a presentation on the need for telecommunications transaction tax reforms at the state and local level. The industry identified three areas in which model statutes or regulations were needed: centralized collection and administration of tax, uniform telecommunications definition and sourcing rules, and protections to minimize class action lawsuits.

The industry requested that the MTC begin a project on these models. The Executive Committee asked the Uniformity Committee to consider the request.

The Uniformity Committee accepted the industry's project request. As a preliminary matter, the Committee split the project into three subprojects—centralized collection and administration, uniform definitions and sourcing rules, and protection from class-action lawsuits—because each aspect of the project involve different considerations. Industry indicated that centralized collection and administration was its most immediate concern, so the Uniformity Committee took up that subproject first. Because it involved local government taxation, local government groups were invited to participate, (The National

League of Cities, National Association of Counties, Government Finance Officers Association, and National Association of Telecommunications Officers and Advisors, National Conference of Mayors) but did not call in for the Uniformity Committee meetings. SST was also invited to participate, and also called in for some of the meetings.

In discussing a centralized collection and administration proposal, the Uniformity Committee quickly recognized that given the differences in current state administrative approaches to communications transaction taxation, a single approach for uniformity's sake is not a practical solution. The Committee split the centralized collection and administration project into three parts, based on the basic state centralized administration levels in the states. The Uniformity Committee appointed a work group to develop these models.<sup>1</sup>

### **Summary of the Proposals**

The purpose of these models is twofold. One, the SSUTA does not require communications simplification. Second, for the past two congressional sessions, federal legislation implementing the Agreement has not contained simplification language.<sup>2</sup> These proposals are meant to give states a guideline in making administrative changes to existing law.

### Introductory Statement

The Introductory Statement provides the definitions used in all of the models.

### Proposal I

Proposal I, state administration and state administration of tax, is patterned after Virginia's communications reform legislation. Section I, Preservation of Local Authority, provides that the model pertains only to the centralized administration of communications taxes, and does not affect a local government's right to impose right of way fees, etc. on communications sellers acting in a capacity other than a seller of communications. Section II provides for state level administration, including audit functions. Section III, Registration, requires a communications provider to register with the state, and no local authority shall require a provider to register with that jurisdiction. Section IV, Rates and Boundary Changes, requires that (A) a local authority to provide the state with boundary and rate changes. Such changes will take effect on the first day of a calendar quarter after 60 days' minimum notice. Subsection (B) requires the state or a designated entity to maintain a rates and boundaries database. An addendum to this section, in brackets, provides that these provisions are not required if there is only one state rate that does not

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<sup>1</sup> The Uniformity Committee would like to thank Richard Cram, KS; Robert Babin, FL; Deborah Bierbaum, AT&T; Jamie Fenwick, Time Warner Cable; Stephen P. Kranz, and Charlie Kearns, Sutherland for their participation in the Work Group.

<sup>2</sup> H.R. 5660, Main Street Fairness Act, 111<sup>th</sup> Congress; S. 1452 and H.R. 2701, Main Street Fairness Act 112<sup>th</sup> Congress.

vary by local taxing jurisdiction. Section V, Returns, governs return requirements to the state. Section VI, Allocation and Distribution of Tax, sets up a Local Trust Fund, maintained by the state, into which all taxes collected are deposited and distributed. Section VII, Authority of State Tax Administrator to Promulgate Rules, permits the state to develop rules to carry out the provisions of the model.

### Proposal II

Proposal II, State administration and Local imposition of tax, was patterned after Florida's communications reform legislation. Section I defines the scope of state level administration of local transactions taxes on communications services, including uniform tax bases, etc. Section II, Preservation of Local Authority; Cooperation Among Jurisdictions, provides that a local government's right to impose or exempt a communications transaction tax is not impaired, nor is the right to require payment from a seller or purchaser of communications regulatory fees or assessments for occupying its roads or rights of way in a capacity other than a seller or purchaser of communications services. It also provides that a local taxing jurisdiction shall comply with a request from a state tax administrator information necessary to administer the requirements of the model. Section III, State Level Administration, provides that sellers or purchasers of communications services are only required to register and file returns with the state tax administrator; that the state tax administrator shall conduct audits on behalf of local jurisdictions; and that the state may authorize third party audits. Section IV, Registration, provides more detail concerning registration requirements mentioned in Section III, as does Section V, Returns. Section VI, Rates and Boundary Changes, provides for the effective dates of changes in rates and local jurisdictional boundaries, and requires the state to maintain a database of same. If the state chooses, it may certify a third party to maintain such database. Section VII, Allocation and Distribution of Tax, provides for a Local Trust Fund to be created and administered by the state tax administrator. Section VIII, Reimbursement of Administrative Costs, provides that the state tax administrator may charge for reimbursement of the cost to administer the local taxes, in an amount not to exceed one percent of the revenues collected. Section IX, Authority of State Tax Administrator to Promulgate Rules, grants authority to the state to develop rules and procedures to carry out the requirements of the chapter, including refunds and credits of local taxes paid.

### Proposal III

The basis for Proposal III, local administration of locally imposed transaction-based communications taxes, is South Carolina's communications reform legislation. In principle, Proposal III is very similar to Proposal II, except that a centralized tax administrator, which may be a local jurisdiction or other entity, is substituted for the state tax administrator in Proposal II.

Attached to this memorandum are the following documents:

A. Communications Transaction Tax Centralized Administration Project – Introductory Statement

B. Proposal I

C. Proposal II

D. Proposal III

## **ATTACHMENT A**

### **Communications Transaction Tax Centralized Administration Project – Introductory Statement**

The MTC initiated a project at its July 2007 meeting to develop a centralized administration model for state and local communications transaction taxes. Based on a review of administrative models around the country the Uniformity Sales and Use Tax Subcommittee decided to develop three approaches to the centralized collection model, each representing a distinct approach to centralization. The Uniformity Subcommittee appointed a working group to develop the models. Proposal I provides for state imposition and administration, with revenue sharing to local governments (see, e.g., the Virginia communications services tax). Proposal II provides for state and local imposition and state level administration (see, e.g., the Florida communications services tax). Proposal III provides for local imposition and centralized local administration of the taxes (see, e.g., the South Carolina telecommunications tax).

#### **Scope of Taxes Covered by Model**

The three proposed models are for use in reforming the administration of state and local taxes on communications services. Solely for determining whether a tax is on communications services the following definitions apply. The definitions are not intended to require a state or local government to tax or exempt any particular type of communications services.

#### **Definitions**

“Ancillary services” means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

“Communications services” includes telecommunications services, ancillary services, and video programming services.

“End user” includes any person other than a person who receives by contract a product “transferred electronically” for further commercial broadcast, rebroadcast, transmission,

retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to another person or persons.

“Local taxing jurisdiction” means any municipality, city, county, township, parish, school district, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include any of the several States, the District of Columbia, or any territory or possession of the United States.

“Local transaction tax on communications services” means any tax, charge, or fee levied by a local taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for communications services, regardless of whether such tax, charge, or fee is imposed on the seller or purchaser or the service and regardless of the terminology used to describe the tax, charge, or fee.

“Purchaser” means an end user of communications services or a person acquiring communications services on behalf of an end user.

“Seller” means the provider of communications services to an end user.

“State tax administrator” means a state’s tax commission, department of revenue, public utilities commission, or any other single entity designated by state law to perform the functions and duties set forth under this chapter for any type of local transaction tax imposed on communications services.

“Telecommunications services” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:

A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

- B. Installation or maintenance of wiring or equipment on a customer's premises;
- C. Tangible personal property;
- D. Advertising, including but not limited to directory advertising.
- E. Billing and collection services provided to third parties;
- F. Internet access service;
- G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider.
- H. Ancillary services; or
- I. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Video programming services” includes cable service as defined in 47 U.S.C. § 522(6); interactive on-demand service as defined in 47 U.S.C. § 522(12); the provision of video programming by a multichannel video programming distributor as defined in 47 U.S.C. §§ 522(20) and –(13); and the provision of video programming by providers of commercial mobile radio service as defined in section 20.3 of title 47, Code of Federal Regulations, when such services are offered for purchase by subscribers or customers of such service.

### **Proposal Models**

At its July 2008 meeting, the Subcommittee directed the working group to concentrate first on developing Proposal II.

The Subcommittee’s working group prepared the attached Proposal II (Draft) in consideration of the following issues and concerns with state/local imposition and state administration: (1) preservation of local taxing authority and inter-jurisdictional cooperation regarding information sharing; (2) delineation of the scope of state-level administration and the state tax administrator’s associated powers and duties, including but not limited to state-level return and audit administration; (3) establishing the content of state-level telecommunications transaction tax returns and the extent to which a separate return would be required to be filed for each type of telecommunications transaction tax; (4) the allocation and distribution of telecommunications transaction taxes from the state tax administrator to the local taxing jurisdictions; (5) reimbursement of the state’s administrative costs by local taxing jurisdictions; (6) the grant and scope of regulatory authority to the state tax administrator for purposes of administering telecommunications transaction taxes consistent with the centralized administration model; and (7) development of necessary defined terms.

Finally, the Subcommittee's working group believes that Proposal II must clearly limit and define the scope of the model to only "centralized administration." Hence, the attached Proposal II (Draft) makes clear at the outset that it does not intend to impact any local taxing jurisdiction's ability to exempt or impose tax on any communications service, to adopt any particular type of transaction tax, or to impose the same rate of such tax(es) as any other local taxing jurisdiction.

## ATTACHMENT B



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### **Communications Transaction Tax Centralized Administration Project—Proposal I, State Imposition, State Administration**

**Executive Committee  
For Discussion Purposes Only  
2/10/12**

#### **I. Preservation of Local Authority**

This chapter does not supersede, impair, or grant the right, if any, of a local taxing jurisdiction to require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a seller or purchaser of communications services.

#### **II. State Level Administration**

A. The state tax administrator shall administer and collect transaction taxes imposed by the state. Sellers or purchasers of communications services that are subject to state transaction tax on communications services are required to register with, file returns with, and remit amounts to the state tax administrator.

B. The state tax administrator shall conduct, or authorize others to conduct on its behalf, audits of such sellers and purchasers for the transaction tax on communications services. If permitted by state law, the state tax administrator may authorize audits of communications service providers to be conducted or performed by others on behalf of the state tax administrator so long as: (1) the person is conducting the audit for all local taxing jurisdictions within the state; (2) the person is subject to the same confidentiality provisions (and other protections afforded a taxpayer) as a person working for the state tax administrator; (3) the audit does not cover an audit period already conducted by the state tax administrator or other person acting on its behalf, absent fraud or mutual consent; and (4) the audit is subject to the same administrative and appeal procedures granted to audits conducted by the state tax administrator; and (5) the person conducting the audit is not paid on a contingency basis.

C. Audits performed by the state tax administrator may include a determination of the seller's or purchaser's compliance with the jurisdictional siting of the end user's service addresses.

### **III. Registration**

Each person engaging in business as a communications services provider must file with the state tax administrator an application for a certificate of registration. No local taxing jurisdiction shall require a person to apply to the jurisdiction for a certificate of registration to engage in business within that jurisdiction.

### **IV. Rates and Boundary Changes**

A. For each local taxing jurisdiction for which this state levies a tax on communications services, the state shall

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum sixty days' notice to the communications provider.

2. Apply local taxing jurisdiction boundary changes only on the first day of a calendar quarter after a minimum sixty days' notice to the communications provider.

B. The state shall

1. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for local communications transaction tax purposes.

2. Provide and maintain a database of all local communications transaction tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format consistent with that maintained by the state revenue agency.

If the state revenue agency does not maintain a database, it shall certify automated systems (CAS) to aid in the administration of local communications transaction taxes. The state may certify a software program as a CAS if it determines that the program meets all of the following requirements:

i. It determines the applicable local tax rate for a communications transaction;

ii. It determines whether or not a transaction is exempt from tax;

iii. It determines the amount of tax to be remitted for each taxpayer for a reporting period;

iv. It can generate reports and returns as required by the state tax administrator; and

v. It can meet any other requirement set by the state tax administrator.

3. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates. The database records must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)).

[These provisions are not necessary if there is only one state rate that does not vary by local taxing jurisdiction.]

## **V. Returns**

A. Every provider of communications services doing business in this state shall, on or before [calendar period], make a return to the state tax administrator, stating:

(i) Its name.

(ii) The address of its principal place of business or the address of the principal place of business (if a different address) from which it engages in the business of providing communications services.

(iii) The total amount of gross charges billed by it during the [calendar period] for providing communications services and upon the basis of which the tax is imposed.

B. The state tax administrator shall:

(i) Require that a return by a provider of communication services be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

(ii) Make available to all providers of communications services a simplified return that is filed electronically.

## **VI. Allocation and Distribution of Tax**

A. The state tax administrator shall provide for the collection of transaction taxes on communications services and the distribution of such amounts to each appropriate local taxing jurisdiction.

B. Notwithstanding any law to the contrary, the proceeds of all transaction taxes on communications services levied by this state for distribution to local taxing jurisdictions shall be transferred to Local Trust Fund and held there to be timely distributed to such local taxing jurisdiction. The state tax administrator may promulgate rules for the reasonable allocation of transaction taxes on communications services to local jurisdictions. Such transaction taxes shall not be withheld or reduced by the [state legislature] for any reason.

C. For purposes of this [section], the Local Trust Fund shall be created and maintained by the state tax administrator. The state tax administrator may promulgate rules for the maintenance of the Local Trust Fund consistent with state law.

## **VII. Authority of State Tax Administrator to Promulgate Rules**

A. The state tax administrator may promulgate rules to administer and enforce the assessment and collection of the taxes, interest, and penalties.

B. To administer the transaction tax on communications services, the state tax administrator may adopt rules relating to:

(i) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange subject to reasonable exceptions determined by the state tax administrator.

(ii) The determination of customer service addresses, consistent with federal and state law.

(iii) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(iv) The records and methods necessary for a provider of communications services to demonstrate the exercise of due diligence.

(v) The registration of providers of communications services.

(vi) The types of books and records kept in the regular course of business which must be available during an audit of a seller's or purchaser's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the state tax administrator in an electronic format when so kept by the seller or purchaser. The seller or purchaser may support any allocation of charges with books and records kept in the regular course of business covering the seller's or purchaser's entire service area, including territories outside this state. During an audit, the state tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

(vii) The procedure for claiming a refund or credit of transaction tax imposed on communications service.

## ATTACHMENT C



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### **Communications Transaction Tax Administration Project—Proposal II, Local Imposition, State Administration**

**Executive Committee  
For Discussion Purposes Only  
2/10/12**

#### **I. Scope of State-Level Administration of Local Transaction Taxes on Communications Services**

The administrative requirements of this chapter shall apply to each type of local transaction tax on communications services within a local taxing jurisdiction. Nothing in this chapter shall be construed to require that the administrative requirements for one type of local transaction tax on communications services be identical to those applicable to any other type of local transaction tax on communications services. To the extent a tax is imposed on any communication service, the base must be uniform among localities. Nothing in this chapter shall be construed to require any local taxing jurisdiction to exempt, or to impose a tax on any communications service, or to adopt any particular type of local transaction tax on communications services, or to impose the same rate of such tax as any other local taxing jurisdiction.

## **II. Preservation of Local Authority; Cooperation Among Jurisdictions**

A. This chapter does not supersede, impair, or grant the right, if any, of a local taxing jurisdiction to impose a local transaction tax on a communications service or exempt any communications service from tax, or require the payment of consideration or to require the payment of regulatory fees or assessments by persons using or occupying its roads or rights-of-way in a capacity other than that of a seller or purchaser of communications services.

B. The state tax administrator may request from any state agency or local taxing jurisdiction any information that the state tax administrator considers necessary in administering this chapter, and such agency or jurisdiction shall furnish such information.

## **III. State Level Administration**

A. The state tax administrator shall administer and collect all local transaction taxes imposed by every local taxing jurisdiction within this state. As applicable, sellers or purchasers of communications services that are subject to any type of local transaction tax on communications services are only required to register with, file returns with, and remit amounts to the state tax administrator, except to the extent that any provision of this chapter is either inconsistent with or not relevant to a provision of the [local enabling law]. The state tax administrator shall conduct, or authorize others to conduct on its behalf, audits of such sellers and purchasers for the local transaction tax on communications services. Local taxing jurisdictions shall not conduct audits of sellers or purchasers for local transaction taxes on communications services, except as otherwise provided in this chapter.

B. If permitted by state law, the state tax administrator may authorize audits of communications service providers to be conducted or performed by others on behalf of the state tax administrator so long as: (1) the person is conducting the audit for all local taxing jurisdictions within the state; (2) the person is subject to the same confidentiality provisions (and other protections afforded a taxpayer) as a person working for the state tax administrator; (3) the audit does not cover an audit period already conducted by the state tax administrator or other person acting on its behalf, absent fraud or mutual consent; and (4) the audit is subject to the same administrative and appeal procedures

granted to audits conducted by the state tax administrator; and (5) the person conducting the audit is not paid on a contingency basis.

C. Audits performed by the state tax administrator may include a determination of the seller's or purchaser's compliance with the jurisdictional siting of the end user's service addresses and a determination of whether the rate collected for the local transaction tax on communications services is correct. However, notwithstanding any other provision of law to the contrary, if the state tax administrator determines that a seller or purchaser of communications services sells or purchases communications services within a single local taxing jurisdiction in this state, that local taxing jurisdiction may perform an audit of such person with respect to the communications services sells or purchases within the local taxing jurisdiction.

#### **IV. Registration**

Each person engaging in business as a communications services provider must file with the state tax administrator an application for a certificate of registration. Registration with the state tax administrator under this section constitutes registration with every local taxing jurisdiction in this state that imposes a local transaction tax on communications services; provided that a communications services provider may elect to separately register with any local taxing jurisdiction in this state that imposes such taxes.

#### **V. Returns**

A. For each type of local transaction tax on communications services imposed by any local taxing jurisdiction within this state, every provider of communications services doing business in this state shall, on or before [calendar period], make a return to the state tax administrator, stating:

(i) Its name.

(ii) The address of its principal place of business or the address of the principal place of business (if a different address) from which it engages in the business of providing communications services.

(iii) The total amount of gross charges billed by it during the [calendar period] for providing communications services and upon the basis of which the tax is imposed.

B. The state tax administrator shall:

(i) Require that only a single tax return for each taxing period for each provider of communications services be filed for each type of local transaction tax on communications services to include all the taxing jurisdictions within the state.

(ii) Require that such returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

(iii) Make available to all providers of communications services a simplified return that is filed electronically.

C. Where a state contains local taxing jurisdictions that impose a type of local transaction tax on communications services at varying rates, each provider of communications services obligated to collect and remit one of the local transaction tax on communications services imposed by a local taxing jurisdiction chapter shall separately report and identify each such tax to the state tax administrator, by jurisdiction, on a form prescribed by the state tax administrator, and shall pay or remit such taxes to the state tax administrator. Where a state contains local taxing jurisdictions that impose a type of local transaction tax on communications services at rates that do not vary and an allocation process applies, the requirements of this paragraph shall not apply.

## **VI. Rates and Boundary Changes**

A. For each local taxing jurisdiction within this state that levies a tax on communications services, the state shall

1. Provide that local rate changes will be effective only on the first day of a calendar quarter after a minimum sixty days' notice to the communications provider.

2. Apply local taxing jurisdiction boundary changes only on the first day of a calendar quarter after a minimum sixty days' notice to the communications provider.

B. The state shall

1. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for local communications transaction tax purposes.

2. Provide and maintain a database of all local communications transaction tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format consistent with that maintained by the state revenue agency.

If the state revenue agency does not maintain a database, it shall certify automated systems (CAS) to aid in the administration of local communications transaction taxes. The state may certify a software program as a CAS if it determines that the program meets all of the following requirements:

- i. It determines the applicable local tax rate for a telecommunications transaction;
- ii. It determines whether or not a transaction is exempt from tax;
- iii. It determines the amount of tax to be remitted for each taxpayer for a reporting period;
- iv. It can generate reports and returns as required by the state tax administrator; and
- v. It can meet any other requirement set by the state tax administrator.

3. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates. The database records must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C.A. Sec. 119(a)).

## **VII. Allocation and Distribution of Tax**

A. The state tax administrator shall provide for the collection of local transaction taxes on communications services and the distribution of such amounts to each appropriate local taxing jurisdiction.

B. Notwithstanding any law to the contrary, the proceeds of all local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions shall be transferred to the Local Transaction Tax Trust Fund and held there to be timely distributed to such local taxing jurisdiction. The state tax administrator may promulgate rules for the reasonable allocation of local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions. Such local transaction taxes shall not be withheld or reduced by the [state legislature] for any reason, except for adjustments to reimburse the state tax administrator for the costs of administering this chapter.

C. For purposes of this [section], the Local Transaction Tax Trust Fund shall be created and maintained by the state tax administrator. The state tax administrator may promulgate rules for the maintenance of the Local Transaction Tax Trust Fund consistent with state law.

## **VIII. Reimbursement of Administrative Costs**

The state tax administrator shall charge the local taxing jurisdiction for its services in an amount sufficient to reimburse the state tax administrator for the cost to the state tax administrator for rendering its services; provided that the amount charged to the local taxing jurisdiction for such services shall not exceed [one percent] of the tax collected. The cost of administration shall be prorated among the local taxing jurisdictions levying a local transaction tax on communications services on the basis of the amount collected for

a particular local taxing jurisdiction to the total amount collected for all such jurisdictions.

### **IX. Authority of State Tax Administrator to Promulgate Rules**

A. The state tax administrator may promulgate rules to administer and enforce the assessment and collection of the taxes, interest, and penalties collected under or imposed by a local taxing jurisdiction.

B. The provisions of the state's communications tax laws shall, as far as lawful and practicable, be applicable to the local taxes on communications services imposed by a local taxing jurisdiction and administered under this chapter and to the collection thereof as if fully set out in this chapter. No provision of the state's communications tax laws shall apply if it conflicts with any provision of this chapter.

C. To administer each type of local transaction tax on communications services, the state tax administrator may adopt rules relating to:

(i) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange subject to reasonable exceptions determined by the state tax administrator.

(ii) The determination of customer service addresses, consistent with federal and state law.

(iii) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(iv) The records and methods necessary for a seller and purchaser of communications services to demonstrate the exercise of due diligence.

(v) The registration of sellers and purchasers of communications services.

(vi) The types of books and records kept in the regular course of business which must be available during an audit of a seller's or purchaser's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the state tax administrator in an electronic format when so kept by the seller or purchaser. The seller or purchaser may support any allocation of charges with books and records kept in the regular course of business covering the seller's or purchaser's entire service area, including territories outside this state. During an audit, the state tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

(vii) The procedure for claiming a refund or credit of local transaction tax imposed on communications service by the local taxing jurisdiction.

## ATTACHMENT D



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### **Communications Transaction Tax Administration Project—Proposal III, Local Imposition, Local Administration**

**Executive Committee  
For Discussion Purposes Only  
2/10/12**

#### **I. Scope of Local-Level Administration of Local Transaction Taxes on Communications Services**

The administrative requirements of this chapter shall apply to each type of local transaction tax on communications services within a local taxing jurisdiction. Nothing in this chapter shall be construed to require that the administrative requirements for one type of local transaction tax on communications services be identical to those applicable to any other type of local transaction tax on communications services. To the extent a tax is imposed on any communications service, the base must be uniform among localities. Nothing in this chapter shall be construed to require any local taxing jurisdiction to exempt, or to impose a tax on any communications service, or to adopt any particular type of local transaction tax on communications services, or to impose the same rate of such tax as any other local taxing jurisdiction.

## **II. Definitions**

As used in this Act, the following term shall apply:

“Centralized tax administrator” means a local taxing jurisdiction or other third party, which may be a private entity, designated by majority vote of local taxing jurisdictions to perform the functions and duties set forth under this Act for any type of local transaction tax imposed on communications services.

## **III. Cooperation Among Jurisdictions**

The centralized tax administrator may request from any local taxing jurisdiction any information that the centralized tax administrator considers necessary in administering this Act, and such agency or jurisdiction shall furnish such information. The centralized tax administrator shall follow the confidentiality laws applicable to the local jurisdiction.

## **IV. Local Level Administration**

A. The centralized tax administrator shall administer and collect all local transaction taxes on communications services imposed by every local taxing jurisdiction within this state. As applicable, sellers or purchasers of communications services that are subject to any type of local transaction tax on communications services are only required to register with, file returns with, and remit amounts to the centralized tax administrator. The centralized tax administrator shall conduct, or authorize others to conduct on its behalf, audits of such sellers and purchasers for the local transaction tax on communications services. Local taxing jurisdictions shall not conduct audits of sellers or purchasers for local transaction taxes on communications services, except as otherwise provided in this Act.

B. The centralized tax administrator may authorize audits of communications service providers to be conducted or performed by others on behalf of the centralized tax administrator so long as: (1) the person is conducting the audit for all local taxing jurisdictions within the state; (2) the person is subject to the same confidentiality provisions (and other protections afforded a taxpayer) as a person working for local taxing jurisdiction; (3) the audit does not cover an audit period for which an audit has already been conducted by a local taxing jurisdiction or other person acting on its behalf, absent fraud or mutual consent; and (4) the audit is subject to the same administrative and appeal procedures granted to audits conducted by local taxing jurisdictions and (5) the person conducting the audit is not paid on a contingency basis.

C. Audits performed by the centralized tax administrator may include a determination of the seller's or purchaser's compliance with the jurisdictional siting of the end user's service addresses and a determination of whether the rate collected for the local transaction tax on communications services is correct. However, if the centralized tax administrator determines that a seller or purchaser of communications services sells or purchases communications services within a single local taxing jurisdiction in this state, that local taxing jurisdiction may perform an audit of such person with respect to the communications services transactions within the local taxing jurisdiction.

## **V. Registration**

Each person engaging in business as a communications services provider must file with the centralized tax administrator an application for a certificate of registration. Registration with the centralized tax administration agency under this section constitutes registration with every local taxing jurisdiction in this state that imposes a local transaction tax on communication services; provided that a communications services provider may elect to separately register with any local taxing jurisdiction in this state that imposes such taxes.

## **VI. Returns**

A. For each type of local transaction tax on communications services imposed by any local taxing jurisdiction within this state, every provider of communications services doing business in this state shall, on or before [calendar period], make a return to the centralized tax administrator, stating:

1. Its name.

2. The address of its principal place of business or the address of the principal place of business (if a different address) from which it engages in the business of providing communications services.

3. The total amount of gross charges billed by it during the [calendar period] for providing communications services and upon the basis of which the tax is imposed.

4. The amount of tax or fee due and the amount of tax or fee remitted.

B. The centralized tax administrator shall:

1. Require that only a single tax return for each taxing period for each provider of communications services be filed for each type of local transaction tax on communications services to include all the taxing jurisdictions within the state.

2. Require that a return by a provider of communications services be due no sooner than the twentieth day of the month following the month in which the transaction occurred.

3. Make available to all providers of communications services a simplified return that is filed electronically.

C. Where local taxing jurisdictions impose a type of local transaction tax on communications services at varying rates, each provider of communications services obligated to collect and remit one of the local transaction taxes on communications services imposed by a local taxing jurisdiction chapter shall separately identify each such tax on the report to the centralized tax administrator, by jurisdiction, in a manner prescribed by the centralized tax administrator, and shall pay or remit such taxes to the centralized tax administrator. The requirements of this paragraph shall not apply to local taxing jurisdictions imposing a type of local transaction tax on communications services at rates that do not vary.

## **VII. Allocation and Distribution of Tax**

A. The centralized tax administrator shall provide for the collection of local transaction taxes on communications services and the timely distribution of such amounts to each appropriate local taxing jurisdiction.

B. The proceeds of all local transaction taxes on communications services levied by each local taxing jurisdiction collected and designated for distribution to local taxing jurisdictions shall be transferred to the Local Transaction Tax Trust Fund and held there to be distributed to such local taxing jurisdiction.

1. Where local transaction tax rates vary between local taxing jurisdictions, the centralized tax administrator shall distribute the communications taxes collected in the amounts as reported on the communications providers' return for each taxing jurisdiction.

2. Where the local transaction tax rates do not vary between local taxing jurisdictions, the centralized tax administrator shall distribute the communications taxes collected to each local taxing jurisdiction by a formula determined by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information.

C. For purposes of this [section], the Local Transaction Tax Trust Fund shall be created by the local taxing jurisdictions and maintained by the centralized tax administrator. The local taxing jurisdictions, by vote as set forth in B(2) of this section, may promulgate rules for the maintenance of the Local Transaction Tax Trust Fund.

## **VIII. Rates and Boundary Changes**

A. Each local taxing jurisdiction within this state that levies a tax on communications services shall

1. Provide that local rate changes will be effective for bills issued on or after the first day of a calendar quarter after a minimum sixty days' notice to the communications provider.

2. Apply local taxing jurisdiction boundary changes only on the first day of a calendar quarter after a minimum sixty days' notice to the communications provider.

B. The centralized tax administrator shall

1. Provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for local communications transaction tax purposes.

2. Provide and maintain a database of all local communications transaction tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties, cities, and parishes, codes corresponding to the rates must be provided according to Federal Information Processing Standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format consistent with that maintained by the state revenue agency.

a. If the state revenue agency does not maintain a database, the centralized tax administrator shall certify automated systems (CAS) to aid in the administration of local communications transaction taxes. The centralized tax administrator may certify a software program as a CAS if the centralized tax administrator determines that the program meets all of the following requirements:

i. It determines the applicable local tax rate for a communications transaction;

ii. It determines whether or not a transaction is exempt from tax;

iii. It determines the amount of tax to be remitted for each taxpayer for a reporting period;

iv. It can generate reports and returns as required by the centralized tax administrator; and

v. It can meet any other requirement set by the centralized tax administrator.

b. Each local taxing jurisdiction shall review software submitted to the centralized tax administrator for certification as a CAS under this section. Such review shall include a review to determine that the program accurately reflects the taxability of the local communications service transaction included in the program. Upon approval by the local taxing jurisdiction, the local taxing jurisdiction shall certify to the centralized tax administrator its acceptance of the determination of the taxability of local communications services in the program.

3. Have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates. The database records must meet the requirements developed pursuant to the federal Mobile Communications Sourcing Act (4 U.S.C.A. Sec. 119(a)).

### **IX. Reimbursement of Administrative Costs**

The centralized tax administrator shall charge the local taxing jurisdictions for its services pursuant to a contract entered into by the centralized tax administrator and the local taxing jurisdictions. The contract shall be approved by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information. The cost of administration shall be prorated among the local taxing jurisdictions levying a local transaction tax on communications services on the basis of the amount collected for a particular local taxing jurisdiction to the total amount collected for all such jurisdictions.

### **X. Authority of Local Taxing Jurisdictions to Promulgate Rules**

The local taxing jurisdictions, by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information, may promulgate rules to administer and enforce the

assessment and collection of the taxes, interest, and penalties collected under or imposed by a local taxing jurisdiction.

## **XI. Process of Rules, Forms and Instructions**

To administer each type of local transaction tax on communications services, the local taxing jurisdictions, by both 1) a majority of the number of local taxing jurisdictions in the state and 2) the local taxing jurisdictions reflecting a majority of the total population of all local taxing jurisdictions in the state according to current U.S. Census Bureau information, may adopt rules relating to:

A. The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange subject to reasonable exceptions determined by the centralized tax administrator.

B. The determination of customer service addresses, consistent with federal and state law.

C. The interpretation or definition of any exemptions or exclusions from taxation granted by law.

D. The records and methods necessary for a provider of communications services to demonstrate the exercise of due diligence in determining correct addresses and applicable rates.

E. The registration of providers of communications services.

F. The types of books and records kept in the regular course of business which must be available during an audit of a seller's or purchaser's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the centralized tax administrator in an electronic format when so kept by the seller or purchaser. The seller or purchaser may support any allocation of charges with

books and records kept in the regular course of business covering the seller's or purchaser's entire service area in this state, including territories outside a local taxing jurisdiction. During an audit, the centralized tax administrator may reasonably require production of any additional books and records found necessary to assist in its determination.

G. The procedure for claiming a refund or credit of local transaction tax imposed on communications services by the local taxing jurisdiction.